

VENTURA
SUPERIOR COURT
FILED

SEP 26 2019

MICHAEL D. PLANET
Executive Officer and Clerk
BY: _____, Deputy

GREGORY D. TOTTEN
District Attorney
W. TAYLOR WATERS, SBN 245590
Senior Deputy District Attorney
800 South Victoria Avenue
Ventura, CA 93009

Telephone (805) 654-2500

Attorney for Plaintiff

SUPERIOR COURT OF CALIFORNIA, COUNTY OF VENTURA

THE PEOPLE OF THE STATE OF CALIFORNIA,

Plaintiff,

v.

JOSE MANUEL PEREZ,

Defendant.

COURT NOS. 2011036340
2011032647

NOTICE OF PENAL CODE
SECTION 1170(d) MOTION
TO RECALL STATE PRISON
SENTENCE

Date: October 18, 2019
Time: 9:00 a.m.
Courtroom: 12

TO THE CLERK OF THE SUPERIOR COURT; THE DEFENDANT, JOSE MANUEL PEREZ;
AND HIS LAST COUNSEL OF RECORD, THE VENTURA COUNTY PUBLIC DEFENDER:

PLEASE TAKE NOTICE that in the above-entitled cases, on the date, time and location listed above, or as soon thereafter as the matter may be heard, the People of the State of California, Plaintiff, by and through their attorneys, GREGORY D. TOTTEN, District Attorney, and W. TAYLOR WATERS, Senior Deputy District Attorney, will move this court to grant the People's motion brought pursuant to Penal Code section 1170, subdivision (d), to recall the state prison sentence of convicted defendant Jose Manuel Perez. Once the defendant's sentence is recalled in Ventura County Superior Court case numbers 2011036340 and 2011032647, the People will move to dismiss Ventura County Superior Court case number 2011036340 pursuant to Penal Code section 1385 and thereafter move to resentence the defendant in Ventura County Superior Court case number 2011032647.

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On March 26, 2019, the defendant admitted his third violation of probation in case numbers 2011036340 and 2011032647 based on a driving under the influence violation he committed on November 4, 2018. As a result of his admission to the probation violation, the defendant's probation was terminated and he was sentenced to a total fixed term of 13 years state prison. The defendant is currently serving the 13-year state prison sentence at Calipatria State Prison.

During the pendency of the third violation of probation, at the request of the defendant's family, the Ventura County District Attorney's Office began a post-conviction investigation regarding the integrity of the defendant's robbery conviction in case number 2011036340. That post-conviction investigation is now complete.

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Penal Code section 1170, subdivision (d)(1), permits the court, at any time, to recall a state prison sentence upon the recommendation of the District Attorney. Once the sentence is recalled, the inmate may be resentenced “in the same manner as if he or she had not previously been sentenced, provided the new sentence is no greater than the original sentence.” (Pen.

1 Code, § 1170, subd. (d)(1).) The court “may reduce a defendant’s term of imprisonment and
2 modify the judgment, including a judgment entered after a plea agreement, if it is in the interest
3 of justice.” (*Ibid.*)

4 The post-conviction investigation undertaken by the Ventura County District Attorney’s
5 Office revealed material, potentially exculpatory evidence related to the defendant’s robbery
6 conviction in Ventura County Superior Court case number 2011036340. The evidence consists
7 of circumstantial evidence suggesting the defendant may not have committed the robbery, a
8 newly identified suspect, the defendant’s brother, who more closely matches the description of
9 the robber, and an admission by the defendant’s brother, albeit after the statute of limitations
10 expired, that the defendant’s brother committed the robbery.

11 Based on that evidence, the People hereby move this court to recall the state prison
12 sentence of defendant Jose Manuel Perez pursuant to Penal Code section 1170, subdivision (d).
13 Once the defendant’s sentence is recalled, the People will thereafter move this court to dismiss
14 Ventura County Superior Court case number 2011036340 pursuant to Penal Code section 1385
15 because the charges and allegations can no longer be proven beyond a reasonable doubt in light
16 of the evidence revealed during the post-conviction investigation. As a result of the changed
17 circumstances, the People will then move this court to resentence the defendant in his remaining
18 case, Ventura County Superior Court case number 2011032647, to a sentence commensurate
19 with the severity of the defendant’s criminal conduct.

20 The robbery victim in case number 2011036340 has been notified of the results of the
21 post-conviction investigation, has been informed of the motions that will be made by the
22 Ventura County District Attorney’s Office, and has been invited to attend and be heard at all
23 future court proceedings.

24 At this time, the People respectfully request that counsel be appointed to represent the
25 defendant for purposes of litigating the Penal Code section 1170, subdivision (d), motion. On
26 March 26, 2019, when the defendant admitted his third violation of probation and was
27 sentenced to state prison, he was represented by the Ventura County Public Defender. The
28 defendant did not appeal the sentence and is not represented by counsel at this time. Near the

1 end of our post-conviction investigation, our office was contacted by the California Innocence
2 Project, to whom criminal discovery has been provided pursuant to their formal request and
3 with the defendant's consent. However, the California Innocence Project does not formally
4 represent the defendant in either criminal case and played no role in the conviction integrity
5 investigation. Criminal discovery has also been provided to the defendant's last counsel of
6 record, the Ventura County Public Defender.

7 The District Attorney's Office has been informed that it will likely take three to four
8 weeks to effectuate the defendant's transfer from Calipatria State Prison to the Ventura County
9 Superior Court. Based on that information, the People request this motion be heard on October
10 18, 2019. In the event that the separately filed order of production can be expedited, the People
11 respectfully request this motion be advanced to the earliest possible date that the defendant can
12 be brought before the jurisdiction of this court.

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14 Respectfully submitted,

15 GREGORY D. TOTTEN, District Attorney
16 County of Ventura, State of California

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18 DATED: September 26, 2019

19 By:



20 W. TAYLOR WATERS
21 Senior Deputy District Attorney
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AMENDED PROOF OF SERVICE

THE PEOPLE OF THE STATE OF CALIFORNIA,
COUNTY OF VENTURA

v.

JOSE MANUEL PEREZ

I, JESSICA MULLEN, say that:

I am a citizen of the United States, over the age of eighteen (18) years, a resident of the County of Ventura, and am not a party to the above-entitled action; my business address is 800 South Victoria Avenue, Ventura, California; on September 26, 2019, I served the within **NOTICE OF PENAL CODE SECTION 1170(d) MOTION TO RECALL STATE PRISON SENTENCE** enclosed in a sealed envelope with postage thereon fully prepaid in the United States mail, transmission, and/or Electronic Mail, at Ventura, California, addressed as follows:

Jose Manuel Perez
DCR # BJ1889
Calipatria State Prison
P.O. Box 5004
A.1 #247
Calipatria, CA 92233

Claudia Bautista
Public Defender
c/o Receptionist
800 S. Victoria Ave.
Ventura, CA 93009

I declare under penalty of perjury that the foregoing is true and correct.
Executed on September 26, 2019, at Ventura California.


JESSICA MULLEN
(805) 654-2527